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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 759 (RMB)

5 JAMES MOORE,

6 Defendant.

7 -----x

Remote Sentencing

8 January 18, 2022
9 10:00 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: VLADISLAV VAINBERG

18 Assistant United States Attorney

19 TARTER KRINSKY & DROGIN, LLP

Attorney for Defendant

20 BY: MICHAEL J. GRUDBERG

21
22 Also Present:

23 Christopher McShea, Host
24
25

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1 THE DEPUTY CLERK: Philadelphia may be having a
2 problem with all of their videos. We should be able to get him
3 on the phone at least to dial in, so I don't know if defense
4 counsel would be comfortable proceeding just by phone or if you
5 would prefer to adjourn to another day

6 THE COURT: I will ask counsel. It's a great
7 question. It's unfortunate, what's going on.

8 THE LAW CLERK: I'm sorry, Judge. Would you like this
9 on the record now?

10 THE COURT: Yeah, sure.

11 Counsel, what is your thinking about -- it seems
12 unfortunate that we can't get the video or may not be able to
13 get the video.

14 MR. GRUDBERG: Thank you, Judge Berman.

15 You may recall that when we were last convened, I did
16 suggest myself that the possibility of Mr. Moore joining by
17 phone, and by phone only, might be an expedient that would
18 advance the calendar. I have raised that with him since, and
19 he did express a preference, under all of the circumstances and
20 given the importance of the day, to be able to join by video,
21 as all other participants.

22 Given the choice now, if they can link him by
23 telephone, your Honor, I suppose, you know, there is a way of
24 looking at it that he might prefer to go forward today than to
25 have that video capability. But I did want to report to the

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1 Court that I did bounce that idea off of him, and it was his
2 clear preference not to compromise in that way.

3 THE COURT: Okay. When we do get him on the line,
4 however we do get him, I will raise that question
5 preliminarily.

6 (Pause)

7 A VOICE: Hello?

8 MR. McSHEA: Dawn, is that you?

9 That is the Philadelphia facility. They are on.

10 Thank you, Dawn.

11 THE CORRECTIONS OFFICER: You're welcome. I'm going
12 to hand the phone off to the inmate now.

13 MR. McSHEA: Perfect. Thank you so much.

14 THE CORRECTIONS OFFICER: You're welcome.

15 You are going to have to scoot over here because it's
16 not going to reach.

17 THE DEFENDANT: Hello?

18 THE COURT: Mr. Moore?

19 THE DEFENDANT: Yes, hello.

20 THE COURT: Hi. This is Judge Berman. How are you?

21 THE DEFENDANT: Good morning, Judge Berman.

22 It seems they are having some technical difficulties
23 here, so I suggested, rather than delay everybody again, I
24 might be able to provide myself this morning on the telephone
25 if that helps everybody.

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1 THE COURT: Well, it's your call. We had some
2 discussion before you came on, that is to say, your counsel and
3 myself. We said that when you did come on that I would raise
4 the question with you about normally you would have -- under
5 normal circumstances, you would have the right to have a
6 sentencing live in the courthouse. Because of the coronavirus,
7 among other things, that is not feasible at the moment. And
8 then secondarily, we had thought to do a videoconference today,
9 and some of us are on video. It turns out, as we understand
10 it, that the facility where you are located is unable to get
11 you on video feed, so we are left with the possibility of
12 having a telephone sentencing today. It is really your call.

13 The options are we could postpone and see if we can
14 get a video feed at a future time or we could go forward and
15 continue the sentencing, which we started in November, today by
16 telephone. It's entirely up to you whether you wish to waive
17 your right to be sentenced in person and/or be sentenced
18 through a videoconference call.

19 THE DEFENDANT: Your Honor, I am sure you have been
20 very thorough in considering everything and will be thorough
21 right now moving forward, so I'm prepared to proceed on the
22 telephone rather than inconvenience everyone else further.

23 THE COURT: Okay. Honestly, it's not an inconvenience
24 as far as I am concerned. But is that acceptable to you,
25 defense counsel?

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1 MR. GRUDBERG: It is, your Honor, I guess with the
2 following clarifying question. Mr. Moore and I had made
3 arrangements with Mr. McShea to have a brief consultation prior
4 to going on the record and resuming the sentencing. Again, I
5 would defer to Mr. Moore's preferences on that. I'm prepared
6 to proceed, but if he wishes to consult with me, I think I
7 would be able to mute this line and --

8 THE COURT: I think, counsel, that Chelsea has a way
9 of putting you two together in a confidential virtual
10 conference if you wish.

11 MR. GRUDBERG: If that would work with Mr. Moore's
12 telephonic joinder, I think that would be perfect; and if he
13 wishes to do that, I think I can be quick about it.

14 THE DEFENDANT: At this point, Michael, I am prepared
15 to do that.

16 THE COURT: At the end of that, Mr. Grudberg, if you
17 would send an e-mail to Chelsea, to chambers, to say that you
18 have finished that conversation.

19 MR. GRUDBERG: I will. Thank you, Judge.

20 (Pause)

21 THE DEFENDANT: I'm here whenever you are ready,
22 Michael.

23 MR. GRUDBERG: I think we are just waiting on the
24 tech, Jim.

25 THE DEFENDANT: Okay. It seems there is some kind of

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1 upgrade taking place here this morning, which of course happens
2 at the most inopportune time.

3 MR. McSHEA: We are having an issue with putting him
4 into a breakout room because he dialed in by telephone now. We
5 are trying to figure out how to do this. Give me one second.
6 Sorry about this.

7 (Pause)

8 MR. McSHEA: The best thing that can happen right now,
9 Michael, can you give Mr. Moore your cell phone number and he
10 can call your cell phone number and hang up on this line for
11 the time being and then dial right back in? That's the only
12 way we could do it by telephone at this point.

13 MR. GRUDBERG: Christopher, would it work for me to
14 mute? Rather than having to dial in, can I mute while we do
15 that and just go to another part of the room?

16 MR. McSHEA: I can mute everyone else, too, and you
17 two could just privately talk.

18 MR. GRUDBERG: I don't think that will be necessary.
19 Why don't I give you my number. I will mute my own line, just
20 so I maintain the connection, and then I will go to another
21 part of my vast office to conduct the call, and we will be back
22 shortly.

23 MR. McSHEA: Perfect.

24 THE DEFENDANT: Michael, am I going to have to find a
25 way to call you now?

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1 MR. GRUDBERG: I think they will do that now for you.
2 I will provide my cell to the person who is attending where you
3 are, Jim.

4 Chris, can you hear me?

5 MR. McSHEA: Yes.

6 MR. GRUDBERG: It's 646-734-8374.

7 MR. McSHEA: Perfect. I'm going to give Dawn a call
8 over in Philadelphia, and I will get right back to you guys.

9 MR. GRUDBERG: Thank you. I will stand by.

10 THE DEFENDANT: So Michael, I'm to wait for a call to
11 come in now, right?

12 MR. GRUDBERG: Yes, Jim. I think they will connect
13 you to my cell.

14 THE DEFENDANT: Oh, okay, okay. I will wait
15 patiently.

16 (Pause)

17 THE DEFENDANT: Michael, we are supposed to have a
18 brief conversation afterwards as well, aren't we?

19 MR. GRUDBERG: Yes. I have raised that with
20 Mr. McShea, and I think we will be able to do that.

21 THE COURT: Are you all set? Or have you not had your
22 conversation?

23 MR. GRUDBERG: I'm sorry, Judge. We haven't been
24 connected yet.

25 THE COURT: Oh, okay.

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1 THE DEFENDANT: Michael.

2 MR. GRUDBERG: Jim.

3 THE DEFENDANT: If they are struggling even to set up
4 a telephone call for us prior, then maybe we should go with
5 what Judge Berman suggested and just go for another date. You
6 are in your office, right? You have not had to travel?

7 MR. GRUDBERG: I am in my office. And just so you
8 know, Jim, I think you are on an open line with all
9 participants. We can discuss this briefly, but you should
10 also, of course, feel free to make known to the Court whatever
11 your thoughts are under all of the circumstances as they
12 develop here.

13 THE DEFENDANT: Yes. Thank you. Thank you.

14 MR. McSHEA: Mr. Moore, is Dawn in the room with you
15 still?

16 THE DEFENDANT: No, she is not.

17 MR. McSHEA: Can you get one of the guards? They are
18 not picking up at the facility, and I need them to dial another
19 number for me.

20 THE DEFENDANT: One second.

21 Dawn, they want to speak with you briefly.

22 One second. She is here.

23 MR. McSHEA: Thank you.

24 THE CORRECTIONS OFFICER: This is Dawn speaking.

25 MR. McSHEA: Dawn, it's Chris. I'm sorry. I've been

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1 trying to call you.

2 Can you dial this number, so Mr. Moore can speak to
3 his lawyer privately, and then dial back in to this number when
4 they are done?

5 THE CORRECTIONS OFFICER: I could try.

6 MR. McSHEA: The number is 646 --

7 THE CORRECTIONS OFFICER: Hold on one second.

8 MR. McSHEA: You got it?

9 THE CORRECTIONS OFFICER: Go ahead.

10 MR. McSHEA: 646-734-8374.

11 THE CORRECTIONS OFFICER: Okay.

12 MR. McSHEA: Thanks. And then just dial back in to
13 the original number I gave you, and then we will go forward.

14 THE CORRECTIONS OFFICER: Okay.

15 MR. McSHEA: Thanks, Dawn.

16 THE CORRECTIONS OFFICER: Yup.

17 (Pause)

18 MR. GRUDBERG: Hello, everyone. I figured this was
19 easier than e-mailing Chelsea. I have completed my call with
20 Mr. Moore and am prepared -- actually prepared to revisit the
21 issue once he joins us again by phone, the issue being the --
22 whether and under what circumstances to go forward today. So
23 without being coy about it, I think I ought to wait for him to
24 rejoin by phone before I say more.

25 THE COURT: That's fine. I think that's absolutely

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1 fine.

2 THE LAW CLERK: Mr. Moore, are you back on the line?

3 THE CORRECTIONS OFFICER: This is Ms. Netchipas
4 (phonetic) from FDC Philadelphia.

5 THE LAW CLERK: Okay. And you can put Mr. Moore back,
6 is that correct?

7 THE CORRECTIONS OFFICER: Yes, ma'am.

8 THE DEFENDANT: Hello?

9 THE COURT: Hi.

10 THE LAW CLERK: Mr. Moore?

11 THE DEFENDANT: Hello. Yes.

12 THE COURT: This is Judge Berman. I think counsel
13 wanted to go first when we all got back on the line.

14 THE DEFENDANT: Okay.

15 THE COURT: Counsel.

16 MR. GRUDBERG: Thank you, your Honor.

17 I just wanted to tell the Court and the government and
18 the assembled others that the first topic of discussion between
19 me and Mr. Moore was to have a chance for us to go back and
20 forth with respect to the question that your Honor put, whether
21 to proceed by video or -- without video or to wait until the
22 technical difficulties could be reconciled.

23 He has expressed to me that, under all the
24 circumstances, and given the importance of the day, that he
25 would like to reschedule at a time when he could participate,

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1 see, and be seen. And I did tell him that I had conveyed to
2 the Court his earlier express preference in that regard and
3 that we have -- you know, insert your punch line about how all
4 of us have been affected by the calendar as it's gone forward.
5 The important thing is to do this right. So I did tell him
6 that I would alert the Court to that and we could explore what
7 to do in light of that going forward.

8 THE COURT: Okay. And Christine and Chelsea, are we
9 confident that we can get a -- from what I understand from
10 counsel's remarks and Mr. Moore's, they would like a
11 videoconference, continuance to a videoconference. When do we
12 think that could happen?

13 THE DEPUTY CLERK: Judge, this is Chelsea. So, as you
14 know, we have had issues scheduling videoconferences with FDC
15 Philadelphia in the past. Their normal video slots are
16 Tuesdays and Wednesdays at 10 a.m. I think Adam Johnson had a
17 hand in getting us this slot today. So if we could reach out
18 to him again, potentially that could help us get a slot on the
19 calendar, but I won't know until a week before whether we can
20 actually go forward on any particular day.

21 THE COURT: So just so you know, if anybody doesn't,
22 Adam Johnson is counsel with the Bureau of Prisons who we often
23 turn to to get a hand in various matters, including this one,
24 getting a video hookup worked out. So I don't know if that's
25 acceptable to counsel and Mr. Moore, but we are happy to try

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1 that again.

2 MR. GRUDBERG: I think that -- I did not deal directly
3 with Mr. Johnson, but I know that Mr. Vainberg was in touch
4 with him and with counsel at the facility. I do believe that
5 he has been helpful here. I guess the one thing I would say,
6 Judge, is that obviously we are all ready to go and our papers
7 are sort of curling up at the edges here. I have some points
8 on my calendar, but very few things that I couldn't move. So
9 if Mr. Johnson were able to prevail on the facility to do
10 something extraordinary on relatively short notice, I would of
11 course flex to make myself available for whatever date, whether
12 it be a Tuesday or a Wednesday, might become available.

13 THE COURT: Just so I understand or maybe, you know,
14 Mr. Vainberg, was there a video hookup established for today or
15 not?

16 MR. VAINBERG: My understanding, your Honor, as
17 Ms. Talbot just explained, was that there was supposed to be a
18 video hookup. It sounds like the facility overall is doing a
19 video upgrade that happened to be scheduled either for the same
20 day as this conference and that upgrade has not -- seems to be
21 affecting their ability to connect, but that's just what I am
22 hearing from this morning, your Honor.

23 MR. GRUDBERG: Mr. Moore mentioned the same, Judge.

24 THE COURT: So you understood that, too.

25 MR. GRUDBERG: That is what I understand from

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1 Mr. Moore, just as he is living through it. More than that, I
2 don't know.

3 THE COURT: So that means we would adjourn today
4 without date, if that's acceptable to the defense, both
5 Mr. Moore and counsel, and endeavor to get another
6 videoconference date.

7 THE LAW CLERK: Judge, this is Christine, if I may
8 interrupt for a moment?

9 THE COURT: Yeah.

10 THE LAW CLERK: My suggestion would be to tentatively
11 schedule for February 1., it's a Tuesday, at 10 a.m., and we
12 will reach out to Mr. Johnson again. This will give the
13 facility some time. It's two weeks from today, Judge.

14 THE COURT: Yeah, I'm happy to do it. Do we have
15 reason to believe that they will do it on that day or do we
16 think it is a place-saver, so to speak?

17 THE LAW CLERK: I'm hopeful that we would be able to
18 do it. Obviously we won't know until the week before, but I do
19 think that Mr. Johnson was very helpful in this regard,
20 understanding that this matter has been adjourned several times
21 by the facility not being able to accommodate us. So I'm
22 hopeful that they will do all that they can so that we can
23 conclude the sentencing proceeding that began in November.

24 THE COURT: Okay. So I do want to say, and without
25 going into the part of the sentencing, I can say this, that

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1 these adjournments are unfortunate, and I apologize for that.
2 I don't believe that Mr. Moore is prejudiced in the sense that
3 the sentence intended to be imposed would go beyond the new
4 date, you know. If that's just in anybody's mind, I wanted to
5 make it clear that he wouldn't be prejudiced in that respect.

6 So if that's okay with you, counsel, we will say
7 February 1.

8 MR. GRUDBERG: I think that makes sense, your Honor,
9 yes.

10 THE COURT: Okay. So I think that's it for today.
11 Government counsel, did you want to add anything or are you
12 okay with the process and the procedure?

13 MR. VAINBERG: No, your Honor. That all makes sense,
14 and I will also contact Mr. Johnson offline, as I did prior to
15 this proceeding, just to impress upon him the need to hopefully
16 get this finally up and going.

17 THE COURT: Okay. Okay. Christine and Chelsea, could
18 you call me separately after we adjourn, which is going to be
19 right now?

20 THE LAW CLERK: Yes, Judge.

21 THE DEPUTY CLERK: Yes, Judge.

22 THE COURT: Thanks. Thanks, everybody, and thank you,
23 Mr. Moore, for your patience.

24 THE DEFENDANT: Thank you, Judge Berman, for yours
25 also.

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THE COURT: All right. We are adjourned for today.

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